

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION**

DEBRA E. WILSON,)	
)	Civil Action No. 5:03-cv-00091
Plaintiff,)	
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
JO ANNE BARNHART,)	By: Samuel G. Wilson
Commissioner of Social Security,)	United States District Judge
)	
Defendant.)	

Plaintiff Debra E. Wilson brings this action challenging the final decision of an Administrative Law Judge (ALJ) denying Wilson’s 1994 claim for disability insurance benefits under the Social Security Act. The ALJ found that Wilson was capable of performing sedentary work and was, therefore, capable of “performing other jobs existing in significant numbers in the national economy.” The United States Magistrate Judge has filed a report pursuant to 28 U.S.C. § 636(b)(1)(B) recommending that the court vacate the ALJ’s decision and remand the case. The court hereby adopts the report and recommendations of the Magistrate Judge and will vacate the decision of the ALJ and remand the case.

I.

Claiming disability due to a back injury, plaintiff Debra Wilson, age 44, first sought disability benefits on August 13, 1991. Prior to that time, Wilson had worked as an assembler and as a shipping clerk. Wilson claimed that she had been disabled by a back injury since January 20, 1990. On May 13, 1993, an Administrative Law Judge (ALJ) allowed Wilson a closed period of disability running from January 20, 1990, to December 1992, when, according to the ALJ, her condition had improved

and her disability had ceased. After the termination of her disability benefits, Wilson took a job as a waitress. She left that post when the restaurant closed, but she claims that she could not do the work anyway.

On June 3, 1994, Wilson reapplied for a period of disability. The ALJ considered whether Wilson qualified for benefits at any point between January 1, 1993, immediately after her first period of benefits expired, and June 30, 1996, the day her insured status expired. After a hearing on September 9, 1999,¹ the ALJ denied Wilson's claim on May 30, 2000. The ALJ specifically found, among other things, that Wilson had "degenerative disc disease and fibromyalgia"; that Wilson's "statements concerning her impairments and their impact on her ability to work on the date her insured status expired are not entirely credible"; and that Wilson had the "exertional capacity for sedentary work." The ALJ considered and discussed Wilson's obesity and its impact on her ability to work when making his decision. When determining Wilson's exertional capacity, the ALJ never heard testimony from a vocational expert (VE);² rather, he relied on the Medical-Vocational Guidelines ("grids"). Having found Wilson capable of sedentary work, the ALJ determined that Wilson was capable of "performing other jobs existing in significant numbers in the national economy," and, accordingly, denied her claim.

Wilson appealed, and the matter was referred to the Magistrate Judge for a report and recommendations. The Magistrate Judge found that the ALJ had erred in relying solely on the "grids"

¹Prior to this hearing, the ALJ had already denied Wilson's claim on September 25, 1996; however, the Appeals Council vacated that decision and remanded the case on March 5, 1999. The Appeals Council ordered the ALJ to give further consideration to Wilson's subjective complaints of pain.

²A VE was present at the hearing but was never called.

to determine Wilson's exertional capacity because Wilson suffered from non-exertional limitations not considered in the "grids," specifically pain and obesity. The Magistrate Judge further found that any determination by the ALJ that Wilson did not suffer from non-exertional limitations was not supported by "substantial evidence." The Magistrate Judge recommended that the ALJ's decision be vacated and remanded. The court must now decide whether to adopt the Magistrate Judge's recommendations.

II.

When evaluating a claimant's exertional capacity, exclusive reliance on the "grids" is inappropriate when the claimant has non-exertional limitations, such as pain or obesity. Coffman v. Bowen, 829 F.2d 514 (4th Cir. 1987); McLain v. Schweiker, 715 F.2d 866 (4th Cir. 1983); Hall v. Harris, 658 F.2d 260 (4th Cir. 1981). In such cases, only testimony from a VE who has considered all evidence pertaining to a claimant's limitations will discharge the Commissioner's burden to show an exertional capacity that comports with the ability to "perform[] other jobs existing in significant numbers in the national economy,"³ id.; Walker v. Bowen, 889 F.2d 47 (4th Cir. 1989), and a decision made without the benefit of VE testimony is not supported by "substantial evidence" and must be vacated. Id.

Despite Wilson's obesity and despite the evidence that Wilson was suffering from at least some pain, the ALJ erroneously relied exclusively on the "grids" when determining Wilson's exertional

³This burden rests with the Commissioner once the claimant has made her prima facie showing that she is not working at a substantial gainful activity, that she suffers from a severe impairment, and that she cannot do her previous work. 20 C.F.R. §§ 404.1520 and 416.920; Hunter v. Sullivan, 993 F.2d 31 (4th Cir. 1992). The ALJ found that Wilson had met each of these criteria, meaning she had made out her prima facie case and the burden rested with the Commissioner.

capacity. Though the ALJ specifically found that Wilson's descriptions of her pain were not "entirely credible," he never found that she was, in reality, suffering from no pain at all; even if he had, such a finding would have directly conflicted with his finding that Wilson suffers from degenerative disc disease and fibromyalgia, conditions bound to cause at least some degree of subjective pain. Wilson's obesity and her pain necessitated the testimony of a VE familiar with the record and with Wilson's limitations. Thus, the decision of the ALJ was not supported by "substantial evidence."

III.

For the reasons stated herein, the report and recommendations of the Magistrate Judge are hereby adopted. The decision of the ALJ is vacated, and the case is remanded for further proceedings in accordance with this opinion.

ENTER: This 19th day of November, 2004.

UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION**

DEBRA E. WILSON,)	
)	
Plaintiff,)	Civil Action No. 5:03CV00091
)	
v.)	<u>FINAL ORDER</u>
)	
JO ANNE B. BARNHART,)	By: Samuel G. Wilson
Commissioner of Social Security,)	United States District Judge
)	
Defendant.)	

In accordance with the court's memorandum opinion entered on this date it is **ORDERED** and **ADJUDGED** that the Commissioner's final decision is **REVERSED** and the matter is **REMANDED** to the Commissioner for further proceedings consistent with the court's opinion, and this matter is stricken from the docket of the court.

ENTER: This November 19, 2004.

UNITED STATES DISTRICT JUDGE

